IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 167 OF 2001

Emiliana Francisco Dias,
widow of Francisco Xavier
Dias, major of age, r/o
House No.79, Kadsal,
Khandeapar, Ponda, Goa. ... Appellant.

Versus

1. Anand Yeshwant Bandekar,
s/o Yeshwant Bandekar,
owner of Bus No. GDT 2489,
r/o Talcond, Raia,
Salcete, Goa,

2. Sumati Sadashiv Naik,
mother of Hiru Sadashiv Naik,
driver of Bus No.2489,
r/o Chaudi, Pali, Usgao,
Bicholim,

3. Sadashiv Hirunath Naik,
father of said Hiru Sadashiv
Naik, r/o Pali, Usgao,
Bicholim,

4. National Insurance Company
Ltd., Margao Branch, Margao,

5. Mrs. Clara Pereira,
wife of Francis Pereira,
aged about 48 years,
House No. 184, r/o
Muxer, Gaunem, Goa,

6. Shri Francis Pereira,
House No. 134, Muxer
Gaunem, Goa,

7. Shri Salvador Dias,
aged about 40 years,
House No.79, Kadsal,
Khandeapar, Ponda, Goa,

8. Mrs. Julie Dias, wife of
Salvador Dias,
aged about 36 years,
House No.79, Kadsal,
Khandeapar, Ponda, Goa,

9. Mr. Richard Dias, aged
about 34 years, r/o House
No.79, Kadsal, Khandeapar,

Ponda, Goa,

10. Shri Lawrence Dias, aged about 28 years, r/o House No.79, Kodsar, Khandeapar, Ponda, Goa,

11. Mrs. Cynthia Menezes, wife of Eufrasio Menezes, aged about 24 years, House No.285, Ferrao waddo, St. Estevao, Goa,

12. Shri Eufrasio Menezes, House no.285, Ferrao waddo, St. Estevao, Goa. ... Respondents.

Shri M. P. Almeida, advocate for the appellant.

CORAM : F. I. REBELLO, J.

DATE : 11th July, 2003.

ORAL JUDGMENT

The Claims Tribunal by the Award dated 16th June, 2001 has awarded in favour of the claimants compensation of Rs.2.6 lakhs alongwith interest and costs etc. The claimants were parents of the deceased Domnick Francisco Xavier Dias, who succumbed to his injury on account of the accident which took place on 22nd February, 1995, at about 16.25 hours. The respondents to the claim petition have not preferred any appeal.

2. The present appeal by the original claimants was for enhancing of the compensation. In the course of the proceedings, claimant no.1 Francisco Xavier Dias has expired. The only question that is for consideration, therefore, would be whether his dependency has not been properly worked out by the learned Claims Tribunal. The issue of compensation was

issue no.3 as formulated by the Claims Tribunal.

3. In its findings on that issue, the learned Presiding Officer of the Claims Tribunal has held that the deceased at the time of death was 31 years of age. The learned Presiding Officer of the Claims Tribunal also held that the claimants had not led any evidence to show their own ages. However, considering the power of attorney at Exh.23 the Claims Tribunal held that claimant no.1 could be considered to be 65 years of age and claimant no. 2 to be 60 years on the date of the death of their son. The Claims Tribunal thereafter has taken the salary of the deceased for the month of February, 1995 as being Rs. 4,136/-. Considering the various other tests, the Claims Tribunal held that the income of the deceased could safely be put at Rs.5,000/-. From that it was set out that a sum of 1/3 the amount could be deducted towards the personal living expenses of the deceased and considering that, worked out the dependency at Rs.1,700/- for each of the claimants. Thereafter allowing a multiplier of 5 to 7 and considering their ages, it accordingly arrived at a compensation of Rs.2.6 lakhs.

4. At the hearing of the appeal on behalf of the appellants, it is contended that the future earnings or potential of the deceased was not considered and considering that the learned Claims Tribunal did not take into

consideration the loss to the estate. The original claimants, as was pointed out, would only be entitled to compensation as dependants. What has, therefore, to be considered is the dependency. The learned Claims Tribunal has fixed the dependency at Rs.3,400/- per month, which perhaps could have been considered to be on a slightly higher side, considering that the income was worked out at Rs.5,000/- per month. Considering that aspect, the compensation awarded could also be considered for the purpose of the estate. In these circumstance, in my opinion, the finding on the compensation awarded cannot be faulted with.

There is no merit, therefore, in this Appeal, which is accordingly rejected.

F.I. REBELLO, J.

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